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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)**

THE PEOPLE,

Plaintiff and Respondent,

v.

PARDEEP SINGH et al.,

Defendants and Appellants.

C058988

(Super. Ct. Nos.
SF102738B, SF102738C)

A jury convicted codefendants Pardeep Singh and Kulwant Singh Gadri of seven counts of attempted premeditated murder and one count of shooting from a vehicle, and sustained enhancements for firearm use and great bodily injury. (Pen. Code, §§ 664/187, 12034, subd. (c), 12022.53, 12022.7, 12022.5.) The trial court sentenced each defendant to an aggregate term of 170 years to life plus life with the possibility of parole.

On appeal, defendants contend the trial court erred in excluding evidence of third party culpability. We disagree and shall affirm the judgments.

FACTUAL BACKGROUND

This case involves a nighttime drive-by shooting of several people in a parking lot of a Stockton restaurant on May 14, 2006.

The story begins earlier that day, at a kabaddi tournament in Stockton. Kabaddi is a rugby-like game, popular with Punjabi and Sikh cultures.

Defendants Pardeep and Kulwant¹ attended the tournament, and were seen throughout the day disputing the tournament committee's decision to bar a particular player. Defendant Pardeep confronted Satwinder G. (also known as "John"), and defendant Kulwant threatened a committee member, Manjit U., over this issue. Satwinder is a longtime kabaddi supporter and an apparently prominent, wealthy member of the Sikh/Punjabi community.

Later in the day, a physical fight broke out at the tournament. On one side of the scuffle were defendants and two of their friends, Sarwan S., who had a knife, and "Happy," who brandished a gun. After the fight, defendant Pardeep told committee member Manjit that "[w]e're not going to let [Satwinder] take the cup [first-place trophy] today no matter what happens." But that is what happened, as the team sponsored by Satwinder won the tournament. Many of the eyewitnesses to this fight were also eyewitnesses and/or victims in the later

¹ Because many of the people involved in this case share the same last names, for clarity we will use first names.

shooting, and at least two of these eyewitnesses (Gurdev A. and Belhar R.) actually fought against defendants' faction.

At the tournament, it was announced there would be a post-tournament dinner at the Sansar Restaurant in Stockton. And after that dinner ended around 11:15 p.m., Satwinder, along with eight other people who had been at the tournament, walked out to the restaurant's parking lot. At this point, a slow-moving silver BMW drove by and its front and rear passengers discharged a barrage of gunfire at Satwinder's group.

Four of the people in Satwinder's group--Satwinder himself, Gurdeep S., Raghbir S., and Belhar R.--all of whom knew both defendants, positively identified defendants as the shooters. Two others--Gurdev A. and Gulwinder S.--identified defendant Kulwant as a shooter.

The defense highlighted inconsistencies between these testimonial identifications and some statements provided to law enforcement. For example, Satwinder initially stated to law enforcement that he did not see what the shooters were wearing, but several hours later described defendant Pardeep's attire; Gurdeep, while being treated at the hospital, did not identify defendants and said he was unable to get a good look at the shooters; Raghbir, while also at the hospital being treated, was unable to describe the vehicle involved though he did so at trial; Belhar told officers at one point he did not know the people who were shooting (language comprehension may have been an issue here); and Gurdev gave inconsistent statements as to

defendant Pardeep being a shooter. Furthermore, Satwinder was close with all of these eyewitnesses. One other individual, Santokh J., who owned the Sansar Restaurant and who was not close with these eyewitnesses, also witnessed the shooting. He was standing near Satwinder, and was shot three times. Although Santokh could not identify the shooters, he heard Satwinder mention the names "Kulwant and Pardeep" right after the bullets flew. Moreover, Santokh had told a police officer that one of the shooters was an Indian male wearing an orange or yellow T-shirt (which matched the description for both defendants).

A "tip" led officers to the silver BMW, and the car was towed to a Department of Justice (DOJ) crime lab on May 16. The car was apparently owned by a friend of defendants and sold about a month after the shooting.² A DOJ firearms expert and a DOJ fingerprint expert did not obtain from the car any inculpatory evidence within their respective realms, but both experts noted that the car had been recently cleaned thoroughly.

Cell phone records for defendants were introduced. In addition to listing calls made and received, cell phone records can show the approximate location of a cell phone, which links to the nearest cell tower during calls. Defendant Kulwant's records displayed a 7:23 p.m. call on May 14 linked to a tower near the kabaddi tournament, and calls at 10:51 and 10:52 p.m.

² The friend was Jasvir G., who was also charged with the crimes. These charges, however, were dismissed after the preliminary hearing.

that night linked to another tower within a half mile of the Sansar Restaurant (these two tower sites are on opposite sides of Stockton--Charter Way and near Hammer Lane, respectively). Defendant Pardeep's records showed a flurry of seven calls between his cell phone and one particular phone number between 10:57 p.m. and 11:26 p.m. on May 14. Defendant Pardeep's cell phone received calls from this number again at 11:27, 11:33 and 11:44 p.m. The Sansar Restaurant shooting was first reported in a 911 call at 11:32 p.m.

There was also evidence that defendant Pardeep had changed his appearance after the incident and before his trial--he shaved his long beard and discarded his turban.

The defense theory was that Satwinder G. is a powerful figure in the Sikh community who wanted defendants blamed for the shooting after they had insulted him at the kabaddi tournament, and that the other witnesses felt obliged to support Satwinder because they knew him well. In support of this defense, defendants, as noted, highlighted some inconsistencies between eyewitness testimony and statements to law enforcement. Additionally, defendant Pardeep offered Sarwan S. as an alibi witness (Sarwan effectively testified he was with Pardeep for most of the May 14 night, but this defense was undercut by Sarwan's additional testimony that he did drop Pardeep off at Pardeep's home earlier that night and by Pardeep's phone records indicating that Pardeep's cell phone called Sarwan's cell phone at 9:02 p.m.). The defense also questioned the lighting

conditions at the site of the shooting, and noted that Satwinder had launched his own investigation into the shooting even though he had positively identified defendants as the shooters to the police.

In rebuttal, Manjit U. testified that Sarwan S. came to the Sansar Restaurant after the shooting and told him, "I tried to stop them [i.e., Kulwant, Pardeep and Happy], but they wouldn't stop."

DISCUSSION

Defendants contend the trial court erroneously denied their pretrial motion to admit evidence of third party culpability.

The case of *People v. Hall* (1986) 41 Cal.3d 826 (*Hall*) sets forth the standard for admitting evidence of third party culpability. As *Hall* states: "To be admissible, the third-party evidence need not show 'substantial proof of a probability' that the third person committed the act [as required by prior decisions]; it *need only be capable of raising a reasonable doubt of defendant's guilt*. At the same time, [the law does] not require that any evidence, however remote, must be admitted to show a third party's possible culpability.

[E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: *there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime*. [¶] . . . [¶] [C]ourts should simply treat third-party culpability evidence like any

other evidence: if relevant it is admissible ([Evid. Code,] § 350) unless its probative value is substantially outweighed by the risk of undue delay, prejudice, or confusion ([Evid. Code,] § 352). [A]n inquiry into the admissibility of such evidence and the balancing required under section 352 will always turn on the facts of the case. Yet courts must weigh those facts carefully [to avoid a hasty conclusion as to the credibility of the evidence, because credibility determinations are for the jury]." (*Id.* at pp. 833-834, italics added.)

Here, the proffered evidence of third party culpability involved two related incidents: a nighttime drive-by shooting of Satwinder G.'s house in Woodland in early November 2007 (when both defendants were in custody on the charges in this case, and when there was a group of people inside Satwinder's house); and a 2002 incident in which Satwinder apparently attacked another man with a folding chair.

Based on these two incidents, the defense's offer of proof was that the shooters at Satwinder's Woodland house in November 2007 and at the Sansar Restaurant in Stockton in May 2006 could well have been the same two people: Rajdeep "Raja" S. and Gurmukh S. This offer was founded on a belief of Satwinder's brother.³ According to Satwinder's brother, Raja had a motive to avenge Satwinder because it was Raja whom Satwinder had attacked with the folding chair in the 2002 incident; and both Raja and

³ At the third party hearing, defense counsel conceded that no one actually saw the Woodland shooters.

Gurmukh had a motive to shoot Satwinder because Satwinder had fired them from a business, and because all four of these men had argued at a festival earlier on the day of the November 2007 Woodland shooting.

The defense reasoned that the November 2007 Woodland shooting was similar to the May 2006 Sansar Restaurant shooting. As defendant Pardeep's brief puts it: "Both events involved a nighttime, drive-by shooting at a group of people that included [Satwinder G.]. These similarities provide circumstantial evidence that the same person or people were involved in both shootings. The excluded evidence provided circumstantial evidence that someone other than Pardeep and Kulwant committed both shootings and that the motive for the Sansar [Restaurant] shooting was not Pardeep and Kulwant's argument with [Satwinder] at the tournament." According to defendant Kulwant, "[t]he excluded evidence involved incidents in which someone other than Pardeep or Kulwant shot at [Satwinder] and for a plausible motive other than [the] minor dispute between them and [Satwinder] at the kabaddi games." Defendants added that both shootings involved a "pattern" in which Satwinder would place blame on persons with whom he had had a recent dispute. Finally, defendants noted, Satwinder himself and the similarity of the shootings provided the link or nexus between the two shootings.

For the reasons that follow, we conclude the trial court properly denied defendants' motion to admit the third party culpability evidence.

Under the applicable legal standard enunciated in *Hall*, "there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*Hall, supra*, 41 Cal.3d at p. 833.) As the People note, defendants' offer of proof of third party culpability was merely that two persons who, Satwinder's brother had speculated, may have committed the November 2007 Woodland shooting may therefore have also had a motive to commit the May 2006 Sansar Restaurant shooting in Stockton. Such speculation and hearsay, the trial court reminded defendants, is not evidence, direct or circumstantial. In fact, defendants' offer of proof also showed that Raja, one of the alleged third party shooters, was in India at the time of the Sansar Restaurant shooting (statements from Raja, confirmed by a ticket fragment he had). As the People also observe, there was no direct evidence linking Raja or Gurmukh to the actual perpetration of the Sansar Restaurant shooting; and no evidence whatsoever that either of these two had attended the kabaddi tournament in Stockton on May 14, 2006, or were anywhere near the Sansar Restaurant at the time of the shooting there. The only circumstantial evidence of a link between the Sansar Restaurant shooting and Raja and Gurmukh was their alleged motives against Satwinder. But, as *Hall* cautioned, "evidence of mere motive . . . in another person,

without more, will not suffice to raise a reasonable doubt about a defendant's guilt." (*Hall, supra*, 41 Cal.3d at p. 833.)

Nor are the alleged similarities between the two shootings of much help to defendants because those similarities are truncated: a nighttime, drive-by shooting involving Satwinder. In fact, the Sansar Restaurant shooting was directed at a group that happened to include Satwinder (six people were wounded in the Sansar shooting, but not Satwinder), while the Woodland shooting was directed at Satwinder's house. Moreover, the Sansar Restaurant and the Woodland shootings were separated substantially in time and space: May 2006 in Stockton, and November 2007 in Woodland, respectively. And the "dispute" between defendants and Satwinder at the kabaddi tournament can hardly be characterized as "minor": It went on all day; it confirmed defendants' worst fears (Satwinder won again); and it led to a physically violent melee.

Defendants counter, however, with a pointed observation of their own: How many *independent* drive-by shootings can one individual incur during a lifetime, or, more significantly, during a relatively short span? Sadly, in this gun-soaked culture of ours, perhaps more than one might think. And as *Hall* recognized in a related context, "'if evidence of motive alone upon the part of other persons were admissible, . . . in a case involving the killing of a man who had led an active and aggressive life it might easily be possible for the defendant to produce evidence tending to show that hundreds of other persons

had some motive or *animus* against the deceased’
[Citation.] Trials must reach an end, and that end must be
logical.” (*Hall, supra*, 41 Cal.3d at p. 835, quoting *People v.*
Mendez (1924) 193 Cal. 39, 52.)

To the extent that defendants steer away from Raja and
Gurmukh as the third party shooters and rely instead simply on
an unidentified third party shooter for the November 2007
Woodland shooting, they run even farther afield from the *Hall*
standard requiring “evidence linking the third person to the
actual perpetration of the crime [i.e., the Sansar Restaurant
shooting].” (*Hall, supra*, 41 Cal.3d at p. 833.)

Defendant Kulwant raises two final contentions. First, he
contends the trial court’s denial of his third party culpability
motion unconstitutionally denied him the right to present a
defense. *Hall* has already effectively rejected this argument in
the context, as here, of third party culpability evidence that
is remote and speculative. (*Hall, supra*, 41 Cal.3d at pp. 834-
835.) And, second, Kulwant claims the trial court erred in
additionally finding under Evidence Code section 352 that the
third party evidence would have been too time-consuming. Since
we have upheld the trial court’s threshold determination that
the proffered third party evidence could not raise a reasonable
doubt (i.e., was not relevant), we need not consider this
additional basis of exclusion. (See *Hall, supra*, 41 Cal.3d at
pp. 833-834.)

DISPOSITION

The judgments are affirmed.

BUTZ, J.

We concur:

BLEASE, Acting P. J.

HULL, J.